

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CHRISTOPHER J. EARL,

Petitioner,

v.

ORDER

Civil File No. 07-156 (MJD/FLN)

JOAN FABIAN, Commissioner,
Minnesota Dept. of Corrections,

Respondent.

Katherine Menendez, Office of the Federal Defender, Counsel for Petitioner.

Kimberly R. Parker and Matthew Frank, Office of the Minnesota Attorney
General, Counsel for Respondent.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel dated April 12, 2010. Both parties have filed objections to the Report and Recommendation and responses to those objections.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). The Court has not reviewed a

transcript of the January 25, 2010 hearing because no such transcript has been ordered and the parties have stipulated that the Court is not required to review a transcript of the hearing in order to resolve all objections. Based on that review the Court adopts the thorough and well-reasoned Report and Recommendation dated April 12, 2010. Additionally, in response to Respondent's objections, the Court specifically highlights its adoption of the Magistrate Judge's finding that "it is more likely than not that Mr. Butler mailed the letter to Petitioner in the ordinary course and that the letter was delivered to Petitioner by neither the Minnesota nor the Florida DOC." (Report and Recommendation at 16.)

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Magistrate Judge's Report and Recommendation dated April 12, 2010 [Docket No. 57] is hereby **ADOPTED** and the dismissal of Petitioner's Petition for Writ of Habeas Corpus is **REVERSED**.
2. The tolling of the statute of limitations under 28 U.S.C. § 2244(d)(1)(B) applies and Petitioner is allowed to proceed with his petition as timely filed.
3. The Court's findings and conclusions are certified to the Clerk of the

Eighth Circuit Court of Appeals.

Dated: May 4, 2010

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court